

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:09CR22
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
DARIUS CHRISTIAN,)	
)	
Defendant.)	

The Court has received the Presentence Investigation Report ("PSR") and the Defendant's objections thereto (Filing No. 55). The government adopted the PSR (Filing No. 54). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to his career offender designation in ¶¶ 35, 83, and 84 on constitutional grounds. The motion will be addressed at sentencing, if the parties agree perhaps in the context of a motion for a downward departure under U.S.S.G. § 4A1.3(b), which does not appear to be precluded under ¶ 6(c) of the plea agreement. By this statement, the Court is not taking any position at this time on the merits of the motion.

IT IS ORDERED:

1. The Defendant's objections to the PSR (Filing No. 55) will be heard at sentencing;
2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the

submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 17th day of September, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge